

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

EPA Region 5 Records Ctr.



274491

THE DOW CHEMICAL CO., et al.,

Plaintiffs,

v.

ACME WRECKING CO., INC., et al.,

Defendants.

Civil Action Nos.
C-1-97-0307; C-1-97-0308
(Consolidated Actions)

C-1-01-439
(Transferred Action)

THE DOW CHEMICAL CO., et al.

Plaintiffs,

v.

SUN OIL COMPANY, d/b/a SUNOCO
OIL CORP., et al.,

Defendants.

Judge Weber

UNITED STATES OF AMERICA,

Plaintiff,

v.

AERONCA, INC., et al.

Defendants.

**UNITED STATES' FIRST REQUEST FOR ADMISSIONS,
SECOND SET OF INTERROGATORIES AND
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
TO RICHARD M. CLARKE**

Pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff, the
United States of America, requests that Defendant Richard M. Clarke: (1) admit or answer the

following requests for admission within forty-five days, as provided for in the First Case Management Order ("First CMO") entered in the above-captioned action; (2) answer fully, in writing and under oath, each of the following interrogatories, and serve such answers on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO; and (3) produce the documents requested below, or in lieu thereof serve authentic copies of such documents on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO.

CRITICAL INSTRUCTION TO RICHARD M. CLARKE

This discovery request is directed to Richard M. Clarke as an individual. According to documents in the custody of U.S. EPA, Richard M. Clarke was the operator of a business named "Dick Clarke Co.," and Dick Clarke Co. was a sole proprietorship. Because Dick Clarke Co. was a sole proprietorship, the sole proprietor -- Richard M. Clarke -- must answer questions relating to Dick Clarke Co. Please note that the definition of "Dick Clarke Co." is very broad and means: "any business that Richard M. Clarke operated as a sole proprietorship (rather than a corporation) and includes all businesses -- operating under any name whatsoever -- that Richard M. Clarke operated where the business was not incorporated." If Richard M. Clarke believes that this definition is too broad because he operated businesses as sole proprietorships that had no connection to the matters involved in this lawsuit, counsel for Richard M. Clarke should immediately contact counsel for the United States, who will narrow the definition as appropriate.

Additionally, Richard M. Clarke was the sole shareholder of Clarke Services, Inc. when BFI bought Clarke Services, Inc. Because of that, the United States alleges that Richard M. Clarke is individually liable under CERCLA as a shareholder distributee of the proceeds of the sale of Clarke Services, Inc. (in addition to our allegation that Richard M. Clarke is individually liable as the sole proprietor of Dick Clarke Co.) While the United States understands that

Richard M. Clarke may deny his individual liability under these theories, the United States is entitled to seek discovery on these issues, and expects Richard M. Clarke to provide answers to the Interrogatories set forth below to the best of his ability.

To the extent that Richard M. Clarke has any questions about the scope of these requests, counsel for Richard M. Clarke is encouraged to contact counsel for the United States, who will be happy to clarify.

INSTRUCTIONS

A. As to the Interrogatories and Document Requests, the United States incorporates by reference the instructions set forth in the United States' First Set of Interrogatories and First Request for Production of Documents to Richard M. Clarke.

B. Richard M. Clarke shall specifically admit or deny each Request for Admission.

C. The answer to any Request for Admission shall fairly meet the substance of the requested admission.

D. When good faith requires that Richard M. Clarke qualify its answer or deny only a part of the matter for which an admission is requested, Richard M. Clarke must specify the portions of the Request to which it admits and then deny or qualify its answer as to the remainder. Wherever a denial or partial denial is made, Richard M. Clarke shall state each and every fact that forms the basis for the denial or partial denial, and shall identify all documents that support or tend to refute its denial or partial denial.

E. Richard M. Clarke shall not give lack of information or knowledge as a reason for failure to admit or deny, unless Richard M. Clarke indicates that it has made a reasonable inquiry and indicates that the information known or readily obtainable by Richard M. Clarke is insufficient to enable it to admit or deny the matter for which an admission is requested.

F. Richard M. Clarke may not object to a Request for Admission for solely on the ground that the matter inquired into presents a genuine issue for trial.

G. Where Richard M. Clarke interposes an objection to any of the following Requests for Admission, the objection shall state with specificity all bases and grounds for the objection.

H. If, in responding to any of these Requests for Admissions, Richard M. Clarke encounters any ambiguity in construing either the Request, a definition, or an instruction, state with specificity the matter deemed ambiguous and identify the construction chosen or used in responding to the Request.

I. These Requests include Requests for Admission of the authenticity of various documents. Following some of these Requests, the United States has placed the batestamped identification number. These batestamps are provided for the convenience of Richard M. Clarke, and do not constitute any portion of the Request for Admission that precedes them. An inaccurate citation shall not constitute sufficient good faith cause for denial. Additionally, these Requests do not seek admissions regarding the batestamp, but pertain solely to the document to which the batestamp is affixed.

DEFINITIONS

A. The United States incorporates by reference the definitions set forth in the United States' First Set of Interrogatories and First Request for Production of Documents to Richard M. Clarke.

RULES OF CONSTRUCTION

A. "And/Or." The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the discovery request inclusive rather than exclusive.

B. Singular/Plural. The plural of a word shall include the singular and the singular of a word shall include the plural.

C. Verb Tense. The past tense of a verb shall include the present tense and the present tense of a verb shall include the past tense.

REQUESTS FOR ADMISSIONS

1. Admit that Richard M. Clarke is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

2. Admit that the Skinner Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3. Admit that there has been a "release," within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) of "hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Skinner Site.

4. Admit that the continued threat of a release of hazardous substances into the environment exists at and/or near the Skinner Site.

5. Admit that the United States has taken actions in response to the release and/or threat of release of hazardous substances at the Skinner Site.

6. Admit that the United States' actions concerning the Skinner Site constitute "response" actions, within the meaning of Section 101(23)-(25) of CERCLA, 42 U.S.C. § 9601(23)-(25).

7. Admit that the United States has incurred response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.

8. Admit that the United States continues to incur response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.

9. Admit that cyanide is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

10. Admit that the copy of the "Skinner Log" that the United States produced in discovery in this action (batestamped 000016-000087) is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.

11. Admit that the copy of the "Skinner Log" that the United States produced in discovery in this action (batestamped 000016-000087) is a business record within the meaning of Rule 803(6) of the Federal Rules of Evidence.

12. Admit that the copy of the "Skinner Log" that the United States produced in discovery in this litigation (batestamped 000016-000087) is admissible into evidence for use in this litigation.

13. Admit that each copy of each document that Richard M. Clarke produced to the United States pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and pursuant to the United States' discovery requests in this action is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.

14. Admit that each of the following documents is an admission of Richard M. Clarke within the meaning of Rule 801(d)(2) of the Federal Rules of Evidence:

- (1) the Agreement dated February 1980 in which Thomas and Margaret Clarke sold a total of 53 shares to Clarke Services (batestamped 001853—001858);
- (2) the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and Browning-Ferris Industries of Ohio, Inc. (“BFI-OH”) (batestamped 001859-001869); and
- (3) the Noncompete Agreement dated March 1, 1984, entered into by “Dick Clarke” (batestamped 001850-001852).

15. Admit that each of the three documents referenced in Request for Admission 14 is admissible into evidence for use in this litigation.

16. Admit that pursuant to the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and BFI-OH (batestamped 001859-001869), Richard M. Clarke did not sell the land at 9740 Cincinnati-Dayton Road, West Chester, Ohio, to BFI-OH.

17. Admit that pursuant to the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and BFI-OH (batestamped 001859-001869), BFI-OH did not assume the liabilities of Clarke Services.

18. Admit that Richard M. Clarke was the beneficiary and/or distributee of the proceeds of the Assignment and Bill of Sale dated March 1, 1984, and entered into between Clarke Services and BFI-OH (batestamped 001859-001869).

19. Admit that, for those instance in which you admit that Richard M. Clarke disposed of substances at the Skinner Site (see your Response to Interrogatory No. 8 of the United States’ First Set of Interrogatories), Richard M. Clarke or an employee of Richard M. Clarke selected the Skinner Site.

INTERROGATORIES

1. Identify all customers of Richard M. Clarke. To the extent that you cannot recall all customers, identify as many as you can.
2. Describe with particularity the persons who received any distributions from the proceeds of the dissolution of Clarke Services, and for each such person, state the date(s) of the distribution, the type of distribution (money, stock, etc), the monetary value of the distribution, and the basis for your estimate of the monetary value of the distribution if the distribution was something other than money. If there was no distribution, explain what happened to the assets of Clarke Services when Clarke Services filed its certificate of dissolution in 1984 (batestamped 001843).
3. Identify the person(s) who are listed as the record owners of the property at 9740 Cincinnati-Dayton Road, West Chester, Ohio, from 1970 to the present.
4. Identify the person(s) who are listed as the record owners of the property at 9300 Dayton Road, in or near Cincinnati, Ohio, from 1970 to the present. (The reason that the United States cannot provide a specific town location for the 9300 Dayton Road address is because your answer to the United States' First Set of Interrogatories did not give a specific town location. Please provide it.)

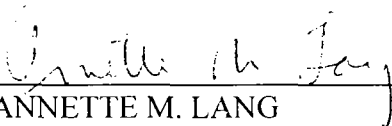
REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Each document that is identified, referred to or used in any way in responding to the United States' Second Set of Interrogatories to Richard M. Clarke.
2. Each document that identifies any customer of Richard M. Clarke.
3. Titles and/or deeds relating to the property at 9300 Dayton Road, in or near Cincinnati, Ohio, from 1970 to the present.

4. All documents relating in any way to the distribution of the assets of Clarke Services upon its dissolution.
5. All documents relating to any trusts involving the children of Thomas Clarke, Sr. and Margaret Clarke (including but not limited to the Clarke Family Trust).
6. For each year between 1984 and 1990, inclusive, all phone bills, electric bills, water bills, payroll records, property tax bills, and bank statements.
7. All documents relating to your claim that the business address of the company that was in the hauling business and did business as Dick Clarke Co. from 1984 through approximately 1990 was 9300 Dayton Road. (See your response to the Interrogatory No. 1 in the United States' First Set of Interrogatories.)

Respectfully submitted,

W. Benjamin Fisherow
Deputy Section Chief
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2002, I caused a true copy of the foregoing **UNITED STATES' FIRST REQUEST FOR ADMISSIONS, SECOND SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO RICHARD M. CLARKE** to be served by first-class mail, postage prepaid upon the following counsel of record:

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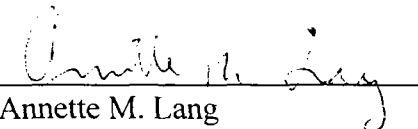
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